

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

JULIO SMITH PARRA,

Plaintiff,

v.

E.K. McDANIEL, et al.,

Defendants.

Case No. 3:12-cv-00657-MMD-VPC

SCREENING ORDER

Plaintiff, who is a prisoner in the custody of the Nevada Department of Corrections, has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983 and has filed an application to proceed *in forma pauperis*. (ECF No. 1).

I. SCREENING STANDARD

Federal courts must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1),(2). *Pro se* pleadings, however, must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under color of state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988).

1 In addition to the screening requirements under § 1915A, pursuant to the Prison
2 Litigation Reform Act of 1995 (PLRA), a federal court must dismiss a prisoner's claim, "if
3 the allegation of poverty is untrue," or if the action "is frivolous or malicious, fails to state
4 a claim on which relief may be granted, or seeks monetary relief against a defendant
5 who is immune from such relief." 28 U.S.C. § 1915(e)(2). Dismissal of a complaint for
6 failure to state a claim upon which relief can be granted is provided for in Federal Rule
7 of Civil Procedure 12(b)(6), and the court applies the same standard under § 1915 when
8 reviewing the adequacy of a complaint or an amended complaint. When a court
9 dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend the
10 complaint with directions as to curing its deficiencies, unless it is clear from the face of
11 the complaint that the deficiencies could not be cured by amendment. See *Cato v.*
12 *United States*, 70 F.3d. 1103, 1106 (9th Cir. 1995).

13 Review under Rule 12(b)(6) is essentially a ruling on a question of law. See
14 *Chappel v. Laboratory Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal
15 for failure to state a claim is proper only if it is clear that the plaintiff cannot prove any
16 set of facts in support of the claim that would entitle him or her to relief. See *Morley v.*
17 *Walker*, 175 F.3d 756, 759 (9th Cir. 1999). In making this determination, the court takes
18 as true all allegations of material fact stated in the complaint, and the court construes
19 them in the light most favorable to the plaintiff. See *Warshaw v. Xoma Corp.*, 74 F.3d
20 955, 957 (9th Cir. 1996). Allegations of a *pro se* complainant are held to less stringent
21 standards than formal pleadings drafted by lawyers. See *Hughes v. Rowe*, 449 U.S. 5,
22 9 (1980); *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). While the standard
23 under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff must provide
24 more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,
25 555 (2007). A formulaic recitation of the elements of a cause of action is insufficient.
26 *Id.*; see *Papasan v. Allain*, 478 U.S. 265, 286 (1986).

27 Additionally, a reviewing court should "begin by identifying pleadings [allegations]
28 that, because they are no more than mere conclusions, are not entitled to the

1 assumption of truth.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). “While legal
2 conclusions can provide the framework of a complaint, they must be supported with
3 factual allegations.” *Id.* “When there are well-pleaded factual allegations, a court should
4 assume their veracity and then determine whether they plausibly give rise to an
5 entitlement to relief.” *Id.* “Determining whether a complaint states a plausible claim for
6 relief [is] a context-specific task that requires the reviewing court to draw on its judicial
7 experience and common sense.” *Id.*

8 Finally, all or part of a complaint filed by a prisoner may therefore be dismissed
9 *sua sponte* if the prisoner’s claims lack an arguable basis either in law or in fact. This
10 includes claims based on legal conclusions that are untenable (e.g., claims against
11 defendants who are immune from suit or claims of infringement of a legal interest which
12 clearly does not exist), as well as claims based on fanciful factual allegations (e.g.,
13 fantastic or delusional scenarios). See *Neitzke v. Williams*, 490 U.S. 319, 327-28
14 (1989); see also *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

15 II. SCREENING OF THE COMPLAINT

16 In the complaint, plaintiff claims that in July of 2007 his due process rights were
17 violated during a disciplinary proceeding because he was denied an interpreter and he
18 was denied witnesses during the hearing. Plaintiff seeks injunctive and monetary relief.

19 Section 1983 does not contain a specific statute of limitations. *Wilson v. Garcia*,
20 471 U.S. 261, 266 (1985); *Vaughan v. Grijalva*, 927 F.2d 476, 478 (9th Cir. 1991). The
21 Supreme Court has determined the appropriate statute of limitations for all § 1983
22 claims, regardless of the facts or legal theory of the particular case, is the forum state’s
23 statute of limitations for personal injury actions. *Perez v. Seevers*, 869 F.2d 425, 426
24 (9th Cir.) (per curiam), *cert. denied*, 493 U.S. 860 (1989). The statute of limitations in
25 Nevada for personal injuries is two years. See NRS § 11.190(4)(e).

26 Federal law governs the point at which a cause of action accrues and the statute
27 of limitations begins to run. *Vaughan*, 927 F.2d at 480. Under federal law, a cause of
28 action accrues when a plaintiff “knows or has reason to know of the injury which is the

1 basis of the action.” *Norco Constr., Inc. v. King County*, 801 F.2d 1143, 1145 (9th Cir.
2 1986); *Cline v. Brusset*, 661 F.2d 108, 110 (9th Cir. 1981).

3 Plaintiff was aware of the alleged constitutional violation, regarding the
4 disciplinary hearing, in July of 2007, but did not file his complaint in this action until
5 December of 2012. Because the event occurred well over two years prior to him filing
6 this complaint, the claim is barred by the statute of limitations.

7 **III. CONCLUSION**


8 IT IS THEREFORE ORDERED that plaintiff’s motion to proceed *in forma*
9 *pauperis* (dkt. no. 1) is DENIED.

10 IT IS FURTHER ORDERED that the complaint is DISMISSED with prejudice as
11 untimely.

12 IT IS FURTHER ORDERED that this Court certifies that any *in forma pauperis*
13 appeal from this order would not be taken “in good faith” pursuant to 28 U.S.C. §
14 1915(a)(3).

15 IT IS FURTHER ORDERED that the Clerk of Court shall enter judgment
16 accordingly.

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18 DATED THIS 14th day of May 2013.

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21 MIRANDA M. DU
22 UNITED STATES DISTRICT JUDGE
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